

SERVICE DATE – JULY 10, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36316

DMH TRUST FBO MARTHA M. HEAD, RED RIVER VALLEY & WESTERN RAILROAD
COMPANY, TWIN CITIES & WESTERN RAILROAD COMPANY, AND
HSC & WESTERN, LLC—CORPORATE FAMILY EXEMPTION

Decided: July 9, 2019

DMH Trust fbo Martha M. Head (DMH Trust), a noncarrier, Red River Valley & Western Railroad Company (RRVW), a Class III carrier, Twin Cities & Western Railroad Company (TCW), a Class III carrier, and HSC & Western, LLC (HSC), a noncarrier, filed a verified notice of exemption on June 13, 2019, under 49 C.F.R. § 1180.2(d)(3), which exempts from the prior approval requirements of 49 U.S.C. § 11323 “[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.” 49 C.F.R. § 1180.2(d)(3).

According to the verified notice, DMH Trust owns and controls 100% of RRVW¹ and TCW.² (Verified Notice 4.)³ HSC is a newly created, wholly owned noncarrier subsidiary of DMH Trust, which created HSC to serve as a non-operating railroad holding company upon exemption of the transaction described in the verified notice. (Verified Notice 4.) Upon exemption, DMH Trust will control 100% of HSC, which will in turn control 100% of RRVW and TCW. (*Id.*) Applicants state that the proposed transaction is “within a corporate family and

¹ RRVW owns a Class III carrier subsidiary, Rutland Line, Inc. (See Verified Notice 4); see also Red River Valley & W. R.R.—Corp. Family Transaction Exemption, FD 35254 (STB served July 2, 2009).

² TCW owns two Class III carrier subsidiaries, Minnesota Prairie Line, Inc., and Sisseton Milbank Railroad Company. (See Verified Notice 4); see also Twin Cities & W. R.R.—Continuance in Control Exemption—Sisseton Milbank R.R., FD 35642 (STB served July 18, 2012); Sisseton Milbank R.R.—Acquis. & Operation Exemption—SLA Prop. Mgmt. Ltd. P’ship, FD 35641 (STB served June 29, 2012); Minn. Prairie Line, Inc.—Modified Certificate, FD 34234 (STB served Oct. 23, 2002); Twin Cities & W. R.R.—Continuance in Control Exemption—Minn. Prairie Line, Inc., FD 34068 (STB served June 6, 2002).

³ See also DMH Trust fbo Martha M. Head—Acquis. of Control Exemption—Twin Cities & W. R.R., FD 35662 (STB served Aug. 24, 2012); DMH Trust fbo Martha M. Head—Acquis. of Control Exemption—Red River Valley & W. R.R., FD 35649 (STB served Aug. 8, 2012).

will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.” (Id.)

When a proposed transaction will not result in a cognizable change in control, the agency has determined that “the mere insertion of a noncarrier holding company in the chain of control is a transaction outside the scope of section 11343(a) [now § 11323(a)] and not subject to its prior approval.” RailAmerica, Inc.—Corp. Family Transaction Exemption—Huron & E. Ry., FD 32068, slip op. at 1 (ICC served June 18, 1992) (citing Woods Indus., Inc.—Control—United Transports, Inc., 85 M.C.C. 672, 675 (1960)) (dismissing notice of exemption); see also Hainesport Transp. Grp.—Corp. Family Transaction Exemption, FD 36184 (STB served May 24, 2018) (dismissing notice of exemption).

DMH Trust is merely inserting HSC, a noncarrier holding company, in the chain of control between it and the railroads it owns. As in RailAmerica and Hainesport, this transaction is outside the scope of § 11323(a) and not subject to the Board’s prior approval. Therefore, the notice of exemption will be dismissed.

It is ordered:

1. The notice of exemption is dismissed.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.